

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JASON MICHAEL SCHUBERT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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1:23-CV-1019-RP
[1:20-CR-292-RP-1]

ORDER

Before the Court is Petitioner Jason Michael Schubert’s (“Schubert”) Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. (Dkt. 56). Also before the Court is Schubert’s Motion for Discovery, (Dkt. 71). Schubert filed his motion on August 27, 2023. (*Id.*). The case was referred to United States Magistrate Judge Mark Lane for findings and recommendations, pursuant to 28 U.S.C. § 636(b). Judge Lane filed his report and recommendation on May 10, 2024. (Dkt. 75). In his report and recommendation, Judge Lane recommends that the Court deny Schubert’s motion to correct his sentence and denied his motion for discovery. (*Id.*). Schubert filed objections to the report and recommendation. (Dkt. 76). The United States does not object to the report and recommendation.

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C.

§ 636(b)(1)(C).¹ Because Schubert objected to each portion of the report and recommendation, the

¹ The report and recommendation addressed both the § 2255 motion and Schubert’s motion for discovery. The Court reviews Judge Lane’s order on Schubert’s Motion for Discovery for clear error. *See* 28 U.S.C. § 636(b)(1)(A); *Castillo v. Frank*, 70 F.3d 382, 385 (5th Cir. 1995) (District courts apply a “clearly erroneous” standard when reviewing a magistrate judge’s ruling under the referral authority of that statute.). Having done so, the Court finds no clear error.

Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Schubert's objections and adopts the report and recommendation as its own order.

In particular, the undersigned agrees with the magistrate judge's finding that the Court varied from the Guideline Range based on its own assessment of the 18 U.S.C. § 3553 factors, with the result that Schubert received a sentence considerably lower than the Guideline Range. That § 3553 assessment does not vary in proportion to the Guideline Range; it does not adjust downwards or upwards in relation to the Sentencing Guidelines. Because the Court rendered its sentence independent of the Guideline Range, the erroneous 2-level enhancement in Schubert's PSR did not affect the sentence and therefore was not prejudicial.

Accordingly, **IT IS ORDERED** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 75), is **ADOPTED**. Schubert's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody, (Dkt. 56), and Motion for Discovery, (Dkt. 71), are **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

SIGNED on August 6, 2024.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE